

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant has met her burden of proof to establish a left shoulder condition causally related to the accepted June 8, 2018 employment incident.

FACTUAL HISTORY

On October 1, 2018 appellant, then a 54-year-old supply technician, filed a traumatic injury claim (Form CA-1) alleging that on June 10, 2018 she sustained a left shoulder rotator cuff tear and damage to the suprascapular nerve when lifting a box while in the performance of duty. On the reverse side of the claim form the employing establishment contended that she was not in the performance of duty when she was injured. It noted that appellant was not on duty on June 10, 2018 and did not report the alleged incident until September 2018. Appellant stopped work on June 15, 2018 and returned to work on September 10, 2018.

In an October 12, 2018 development letter, OWCP advised appellant of the deficiencies of her claim. It requested additional factual and medical evidence and provided a questionnaire for her completion. OWCP afforded appellant 30 days to respond.

Appellant provided additional evidence. On June 10, 2018 she underwent left shoulder xrays which demonstrated widening at the left acromioclavicular (AC) joint.

On June 12, 2018 appellant sought treatment of her left shoulder at the emergency room. Dr. Avinash Prabhakar, a Board-certified internist, reported her history of moving a box at work. He noted that appellant previously underwent a magnetic resonance imaging (MRI) scan, which demonstrated tendinosis and superior labrum anterior and posterior (SLAP) tear. Dr. Prabhakar reviewed a February 12, 2018 MRI scan and found moderate-to-severe subscapularis tendon tendinosis, moderate supraspinatus tendon tendinosis, and a degenerated superior labrum with no definite tear. He also found mild-to-moderate AC joint degenerative changes. Dr. Prabhakar diagnosed aggravation of known rotator cuff tear, and SLAP tear.

In June 15 and 16, 2018 notes, Dr. Daniel P. Sheesley, an osteopath, noted appellant's complaints of chronic left shoulder pain, but that she denied a left shoulder injury. He diagnosed adhesive capsulitis.

On June 26, 2016 Dr. Syed Habib, a Board-certified orthopedic surgeon, examined appellant due to left shoulder impingement and adhesive capsulitis. He also examined her on July 19, 2018 and recounted her concern that she may have torn a tendon from a June 2018 injury when she was moving a heavy item.

Appellant provided notes beginning June 26, 2018 from a physical therapist.

On July 20, 2018 appellant underwent an additional left shoulder MRI scan, which demonstrated AC joint osteoarthritis, subscapularis tendinosis, supraspinatus tendinosis, and intrasubstance tear, as well as mild edema of the supraspinatus and infraspinatus muscles.

Dr. Habib examined appellant on August 7, 2018 and diagnosed impingement syndrome of the left shoulder region. He noted that she had recounted a previous diagnosis of compressed discs in the cervical spine based on an MRI scan.

In an August 8, 2018 note, Dr. Gabriel Solomon, a physician Board-certified in geriatric medicine, provided work restrictions.

On September 10 and 26, 2018 Dr. Mark Pinto, a Board-certified orthopedic surgeon, examined appellant due to left shoulder pain with atrophy. He listed her history of injury as lifting a mirror and experiencing a “zing.” Appellant’s September 10, 2018 left shoulder x-rays were normal. Dr. Pinto reviewed her September 18, 2018 electromyogram (EMG) and noted moderate-to-severe supraspinatus neuropathy at the suprascapular notch with possible cervical radiculopathy. He diagnosed left shoulder suprascapular neuropathy.

By decision dated November 15, 2018, OWCP denied appellant’s traumatic injury claim, finding that she had not established factual component of her claim as she had not responded to its factual development questionnaire. It, thus, concluded that the requirements had not been met to establish an injury as defined by FECA.

OWCP continued to receive evidence. In a November 8, 2018 response to OWCP’s factual development questionnaire, appellant asserted that she injured her left shoulder at work on June 8, 2018. She indicated that she was delivering wheelchairs and rollers that were boxed, but awkward and heavy. While moving a large box in an attempt to put it on a shelf, appellant experienced a knife-like stabbing pain in her left shoulder. She first sought medical attention on June 10, 2018.

On November 30, 2018 appellant, through counsel, requested an oral hearing before a representative of OWCP’s Branch of Hearings and Review.

On April 10, 2019 appellant testified before an OWCP hearing representative and noted that her current position was as a purchasing agent, which began in September 2018. She described her previous position as requiring heavy moving and lifting. Appellant also described her June 10, 2018 employment injury as lifting a heavy box and experiencing a sharp pain in her left shoulder. She noted that she sought medical treatment within a week of the employment incident. Appellant denied informing Dr. Pinto that she was lifting a mirror and testified that she informed him she was lifting a box.

On June 11, 2018 Dr. Solomon examined appellant after she injured her shoulder at work lifting something. He reviewed her left shoulder x-ray and suggested that she had a rotator cuff injury or partial tear.

By decision dated June 24, 2019, OWCP’s hearing representative modified OWCP’s November 15, 2018 decision, finding that appellant had established that the June 8, 2018 employment incident occurred as alleged and the medical evidence of record established a diagnosed condition. However, the claim remained denied as the medical evidence was insufficient to establish causal relationship between the accepted June 8, 2018 employment incident and the diagnosed conditions.

On August 23, 2019 appellant, through counsel, requested reconsideration and submitted an additional report from Dr. Pinto. In a note dated May 20, 2019, Dr. Pinto noted that she lifted a box weighing approximately 50 pounds on June 10, 2018. He found that the lifting injury was consistent with appellant's pathology, that suprascapular neuropathy was confirmed by EMG, and that her history and the pathology were completely consistent and related to her injury at work.

By decision dated September 17, 2019, OWCP denied modification of the June 24, 2019 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,³ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine if an employee has sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. The first component is whether the employee actually experienced the employment incident that allegedly occurred.⁶ The second component is whether the employment incident caused a personal injury.⁷

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.⁹ The weight of the medical evidence

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *T.M.*, Docket No. 19-0380 (issued June 26, 2019); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁷ *M.H.*, Docket No. 18-1737 (issued March 13, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.A.*, Docket No. 18-0399 (issued October 16, 2018); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹⁰

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left shoulder condition causally related to the accepted June 8, 2018 employment incident.

In support of her claim, appellant provided a note dated May 20, 2019 from Dr. Pinto. Dr. Pinto noted her history of injury and opined that the lifting injury was consistent with her pathology and was related to her injury at work. Although Dr. Pinto supported causal relationship, he failed to provide medical rationale explaining the basis of his conclusory opinion. Without explaining, physiologically, how the accepted employment incident caused or aggravated the diagnosed conditions, this report is of limited probative value and insufficient to establish appellant's claim.¹¹

Appellant also provided reports from Drs. Prabhakar, Habib, and Pinto, noting a lifting injury at work and providing various left shoulder diagnoses. The physicians did not, however, offer a medical opinion as to whether appellant's diagnosed conditions were causally related to the accepted employment incident. The Board has held that medical evidence that does not provide an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹² Therefore, these medical reports are also insufficient to establish appellant's claim.

Appellant also submitted diagnostic studies including x-rays, an EMG study, and MRI scans addressing physical findings in her left shoulder. The Board has held, however, that diagnostic studies standing alone lack probative value on the issue of causal relationship as they do not provide an opinion on causal relationship between an employment incident and a diagnosed condition.¹³

Appellant provided a series of notes beginning June 26, 2018 from a physical therapist. The Board has held that reports signed solely by physical therapists are of no probative value as physical therapists are not considered physicians as defined under FECA.¹⁴ These reports are, therefore, insufficient to establish appellant's claim.

¹⁰ *D.R.*, Docket No. 19-0954 (issued October 25, 2019); *James Mack*, 43 ECAB 321 (1991).

¹¹ *S.K.*, Docket No. 20-0102 (issued June 12, 2020); *M.M.*, Docket No. 20-0019 (issued May 6, 2020).

¹² *Id.*

¹³ *Id.*

¹⁴ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." 5 U.S.C. § 8101(2). See also *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *D.H.*, Docket No. 18-0072 (issued January 21, 2020) (physical therapists are not considered physicians under FECA).

As appellant has not submitted rationalized medical evidence establishing causal relationship between her diagnosed left shoulder conditions and the accepted June 8, 2018 employment incident, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds appellant has not met her burden of proof to establish a left shoulder injury causally related to the accepted June 8, 2018 employment injury.

ORDER

IT IS HEREBY ORDERED THAT the September 17, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 18, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board